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VENDING ZONE SYSTEM FOR PUSH CART FOOD VENDORS

August 9, 1985

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Patricia F. Foran

August 9, 1985.

To: City Council

Subject: Vending Zone System for Push Cart Food Vendors

Origin: Clause 41 of Report No. 9 of the City Services Committee adopted in Council, as amended, at its meeting held on May 21 and 24, 1985. (c06cnc185114:110)

Comments:

At its aforesaid meeting, Council adopted the following recommendations:

"1. That a vending zone system for push cart food vendors be introduced, as described in the body of the report (May 1, 1985) from the Commissioner of Public Works, and with similar terms and conditions as contained in Section 18C (Flower/Fruit Vending) of Streets By-law No. 12519, with the exception of Sub-Sections (5), (6)2., and (11);

2. that the locations listed on Attachment "A" of the above-mentioned report be approved as push cart food vending zones, on the understanding that additional locations may be added as approved by Council in future;

3. that the City Solicitor, in consultation with the Commissioner of Public Works, be requested to report on the form of draft by-law amendment to give effect to recommendation No. 1.

4. that the following be deleted from the Criteria for Vending Zones, as set out in the report (May 1, 1985) from the Commissioner of Public Works:

"(a) All zones shall be on City sidewalk or boulevard and a distance of 3.66 metres of clearance is required from the curb.

(b) The 3.66 metres of clearance from the curb is required in order to provide 2.14 metres of

clear sidewalk space for pedestrians, with greater widths specified in areas of intense pedestrian use, and 1.52 metres of space for the vendors' customers.".

... ...

"It is also recommended that the two locations set out in the communication (May 21, 1985) from the Commissioner of Public Works be added to Attachment 'A', and that the Commissioner of Public Works be requested to report to the Executive Committee on the five other vending zone locations in the Yorkville area.".

At the Executive Meeting held on July 31, 1985, Alderman Kanter requested that such draft by-law be submitted directly to Council for its meeting to be held on August 12, 1985.

Attached is such draft by-law. However, I feel it necessary to make some comments on certain aspects thereof and these comments are as follows:

1) The report from the Commissioner of Public Works contains no definitions of what is intended by the words "push cart" or "block". Accordingly, I have defined same in the manner which, from reading such report, I think appropriate.

2) The said report does not seem to indicate how a Push Cart Food Vending Zone would be identified on the street so that both permit holders and non-permit holders are aware of its existence. Accordingly, I have put in subsection (4) which provides for markings on the sidewalk. If this is not what Council intended, then I will require further instructions.

3) The said report is in my view unclear as to what is intended with respect to time limits. In one part of the report it is indicated: "...I am proposing that for holders of City permits, the maximum time restrictions be extended to a 12-hour period when operating within a vending zone." On the other hand further on in the report it is indicated as follows:

"(b) Vending zone permit holders shall be exempt from any time restrictions when operating from within a vending one. Other push cart food vendors shall be prohibited from blocks containing vending zones.

Agreed."

To me, these two statements are inconsistent. I have left out any time restrictions, and if this is not what Council intended, I will require further instructions.

4) In recommendation 1 as adopted by Council, I was instructed that the draft by-law should have "similar terms and conditions as contained in Section 18C (Flower/Fruit Vending) of Streets By-law 12519, with the exceptions of subsections (5), (6)2 and (11). One of the terms and conditions of said Section 18C reads as follows:

"(3) A permit issued in accordance with this section shall permit the holder thereof to establish, maintain and operate on such portion or portions of the sidewalk or boulevard as set out in such permit a portable stand for the display and sale of his products and a seat in conjunction therewith."

As I understand it, it is not intended to restrict push cart food vendors' permits to a specified Push Cart Food Vending Zone or Zones set out in the permit as is done in the case of flower vendors, but rather to allow a permit holder to occupy a space in any Push Cart Food Vending Zone on a first-come, first-served basis. This I have provided for in the draft by-law, and if my understanding is incorrect in this respect I would require further instructions.

5) It is stated in the report that "All other push cart food vendors would be prohibited from blocks containing such zones.". I have provided that such prohibition would apply to the sidewalk on both sides of the street, between two intersecting highways, in which such zone is located. If my

understanding is incorrect in this respect, I will require further instructions in this respect.

6) It is apparent that Council does not wish the Commissioner of Public Works to report on each application, as is the case in applications for flower vending permits. I have, to avoid illegal delegation, drawn the by-law in such a way so that if the applicant does everything required by the section, then the Commissioner of Public Works has no discretion and must issue the permit or renewal thereof, but where the said Commissioner thinks the application or renewal should be refused, such matter must be reported through the City Services Committee to Council, since clearly it is the Council which must make such decision.

7) The Commissioner of Public Works has indicated to me that the location of the proposed zone referred to in the said communication dated May 21, 1985, which read "North-east corner of Avenue Road and Yorkville Avenue" should read "Yorkville Avenue - north side east of Avenue Road". I have so included as item 31 of subsection (2) in the draft by-law of this location. I point out that the City cannot by amendment to the Streets By-law designate Push Cart Food Vending Zones on Metro Roads.

8) Council will also have before it my report pertaining to the prohibition of street vending in the Yorkville Area. If the draft by-law contained in that report is enacted, it will be necessary to amend the attached draft by-law by adding in subsection (6) thereof after 18 "and section 4D".

9) The Commissioner of Public Works has stated in a letter to me:

> "It would appear that these sub-sections approve or permit the approval by City Council of the entire length and width of sidewalks to be designated as food vending zones. I would appreciate it if you would advise me if this is the case or if I am authorized, following approval by City Council of a location as a food vending zone, to designate certain area/s

(each measuring 2.32 square metres) under the provisions of sub-section (4) as food vending location/s.".

I do not believe that this point was considered in any of the reports under consideration. What the draft by-law contemplates is that the areas set out in subsection (2) of proposed section 18E. would be designated as stated above. I can find no provision in the reports under consideration for delineating such zones or for further delineating spaces within such zones. I have provided in the draft by-law for delineating zones since this is the only way I could conceive that the by-law would work and could be enforced.

If it is contemplated that zones be divided up into delineated spaces, then I am of the view that the Commissioner of Public Works could so do if directed by Council, but in such case I would think that the draft by-law should be further amended so as to provide the following:

"(15) Where the Commissioner of Public Works has marked off within a Push Cart Food Vending Zone individual spaces not exceeding 2.32 square metres each, no person issued a permit under this section and no agent or employee of such person, shall occupy more than one such marked space within any given Push Cart Food Vending Zone.".

Conclusion:

If so advised Council could approve the form of the attached by-law and authorize the introduction of a bill to give effect thereto, provided that

1) if a bill to authorize the prohibition of street vending in the Yorkville area is enacted, the attached draft by-law should be amended as set out in 8) above;

2) if it is intended that the Commissioner of Public Works mark out individual spaces within each Push Cart Food Vending Zone, the attached draft by-law should be amended as set out in 9) above.

Patricia F. Foran
Deputy City Solicitor.

PFF:WEC

Attachment

DRAFT BY-LAW

No. A BY-LAW

To further amend By-law No. 12519 Respecting Streets.

(Passed , 1985.)

The Council of The Corporation of the City of Toronto enacts as follows:

1. By-law No. 12519, being "A By-law Respecting Streets.", as amended, is further amended by adding after section 18D. thereof the following section:

"18E. (1) For the purposes of this section

(a) "block" shall mean the whole of a street between two intersecting streets.

(b) "motor vehicle" includes an automobile, motorcycle, motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power;

(c) "push cart" shall mean a vehicle, other than a motor vehicle, which is capable of being moved from place to place by any person;

(d) "Push Cart Food Vending Zone" shall mean the portion of the sidewalks in the areas designated by subsection (2) of this section;

(e) "push cart food vendor" shall mean any person who uses a push cart to sell, offer for sale or display refreshments or foodstuffs for public consumption;

(f) "vehicle" includes a motor vehicle, trailer, traction engine, farm tractor, road building machine and any vehicle drawn, propelled or driven by any kind of power, including muscular power.

(2) The portions of the sidewalks and boulevards on or upon the following streets are hereby designated as Push Cart Food Vending Zones for the purposes of this section:

1. College Street, north side, Queen's Park to Spadina Avenue
2. Fronting Premises Nos. 825 to 863 Bay Street
3. Grosvenor Street, north side, west of Bay Street
4. Fronting Premises Nos. 875 to 901 Bay Street
5. Fronting Premises Nos. 909 to 945 Bay Street
6. Fronting Premises Nos. 981 to 907 Bay Street
7. Bay Street, east side, Charles Street West to Bloor Street West
8. Alexander Street, north-east corner of Yonge Street
9. Dundonald Street, north side, east of Yonge Street
10. College Street, south side, flankage of 700 University Avenue
11. Albert Street, east of James Street
12. Albert Street, north side, Bay Street to James Street
13. Armoury Street, north side, University Avenue to Centre Avenue
14. College Street, south side, University Avenue to Yonge Street
15. College Street, north side, west of Yonge Street
16. Victoria Street, east side, north of Dundas Street East
17. McGill Street, south side, east of Yonge Street
18. Granby Street, south side, east of Yonge Street
19. Carlton Street, south side, east of Yonge Street

20. Clarence Square, North Branch, north side, east of Spadina Avenue

21. Queen Street West, from Soho Street to Spadina Avenue

22. Front Street West, south side, York Street to Yonge Street

23. Temperance Street, north side, from Bay Street to Yonge Street

24. Fronting 40 The Esplanade

25. Fronting Premises No. 71-87 Front Street East

26. Front Street East, north side, Scott Street to limit of Berczy Park

27. Fronting 80 Front Street East

28. Fronting Premises Nos. 41-49 Queens Quay West

29. Fronting Premises No. 33 Queens Quay West

30. North-west corner of Hazelton Avenue and Yorkville Avenue

31. Yorkville Avenue, north side, east of Avenue Road.

(3) Council may, from time to time, by by-law, add to, delete from or vary the portions of the sidewalks and boulevards on the streets designated as Push Cart Food Vending Zones under subsection (2).

(4) The Commissioner of Public Works shall cause the sidewalk and boulevard in each Push Cart Food Vending Zone so designated under subsection (2) to be clearly marked and delineated so as to identify to the public that the area has been designated as a Push Cart Food Vending Zone.

(5) Notwithstanding any other provision of this by-law or any other permit issued under this by-law where a Push Cart Food Vending Zone has been marked and delineated in accordance with subsection (4) no person shall from a push cart sell, offer for sale or display for sale any refreshment or any kind of foodstuffs or otherwise occupy for purposes of push cart food

vending, any such Push Cart Food Vending Zone unless such person is the holder of a permit issued under this section.

(6) Section 18 of this by-law shall not apply to the holder of a permit issued in accordance with this section.

(7) A permit issued in accordance with this section shall permit the holder thereof to use and occupy for the sole purpose of push cart food vending, a portion of no more than 2.32 square metres of the sidewalk and boulevard in any Push Cart Food Vending Zone in the City of Toronto, on a first-come, first-served basis.

(8) An application on the prescribed form may be made to the Commissioner of Public Works for a permit under this section and such application shall set out the name, address and qualifications of the applicant and shall have attached thereto

(a) proof that the applicant is the holder of a valid push cart food vendor's licence issued by the Metropolitan Licensing Commission and that such licence is in good standing;

(b) a drawing or sketch showing the design of the push cart seat and waste receptacle, which push cart seat and waste receptacle must be able to be accommodated within 2.32 square metres;

(c) details of the type of refreshment or foodstuffs to be offered for sale.

(9) Any permit issued pursuant to subsection (8) shall be issued only after

(i) the applicant has paid the fee prescribed by this section;

(ii) the applicant has provided a certified copy of certificate of insurance policy in accordance with this section; and

(iii) the applicant has entered into an agreement containing the following terms and conditions:

a. That the permit holder shall display the permit in such a way

that it is clearly visible on the food vendor's push cart;

b. That the permit holder shall permit the Commissioner of Public Works or any Public Utility to enter the portion or portions of the sidewalk and boulevard within any Push Cart Food Vending Zone for the purpose of installation, maintenance and repair of pipes, cables, wires, poles and other installations;

c. That the permit holder shall indemnify and save harmless the Corporation of the City of Toronto from any action, claim, damage or loss whatsoever arising from the use of the sidewalk and boulevard within any Push Cart Food Vending Zone or anything undertaken or neglected to be undertaken in connection with the said use;

d. That the permit holder shall not use the Push Cart Food Vending Zone in whole or in part for any purpose other than push cart food vending.

e. That the permit holder shall during the period of his use, of any Push Cart Food Vending Zone or any portion thereof at his own expense cause to be maintained at all times a policy of insurance satisfactory to the City Treasurer in which the City is a named insured and is indemnified against all liabilities which in any way arise from such use of the sidewalk or boulevard;

f. That the permit holder shall at all times and at his own expense keep and maintain the portion or portions of any sidewalk and boulevard within any Push Cart Food Vending Zone, which he occupies and

any area adjacent thereto in a clean, sanitary, attractive condition satisfactory to the Commissioner of Public Works and shall keep the sidewalk and boulevard from papers, rubbish and debris of all kinds;

g. That the permit holder agrees upon the termination of the permission for the use of any Push Cart Food Vending Zone he shall at his own cost and expense remove the push cart from the sidewalk or boulevard and the Push Cart Food Vending Zone upon 1 day's notice in writing from the Commissioner of Public Works so to do and shall not make any claim against the City on account of such removal and shall leave the said sidewalk and boulevard in a safe and proper condition to the satisfaction of the Commissioner of Public Works; provided that if the permit holder neglects, refuses or fails so to do within the time specified in the notice, then, the Commissioner of Public Works may remove the push cart from the sidewalk or boulevard and the Push Cart Food Vending Zone and restore them to a safe and proper condition and may charge the costs thereof to the permit holder of which costs the certificate of the Commissioner of Public Works shall be final and the City may recover such costs from the permit holder in any court of competent jurisdiction as a debt owing by the permit holder to the City;

h. That the permit holder agrees that the Council of the Corporation may cancel the permission to use any Push Cart Food Vending Zone and the Commissioner of of Public Works may suspend for any cause such

permission pending his report thereon to the City Services Committee and Council;

i. That the permit holder agrees that he shall not assign or transfer the permission for the use of any Push Cart Food Vending Zone without the prior consent of Council;

j. that the holder understands and agrees that the permit issued under this section enables the permit holder or an agent or employee, as permitted by subsection (11) of the section, of such permit holder, to use and occupy for the sole purpose of push cart food vending a portion of no more than 2.32 square metres of the sidewalk and boulevard in any Push Cart Food Vending Zone in the City of Toronto on a first-come, first-served basis.

(10) Where the Commissioner of Public Works is satisfied that an applicant for a permit under this section has complied with all of the requirements of subsections (8) and (9) of this section, the said Commissioner shall issue on behalf of the Corporation the permit to the applicant provided however that where the said Commissioner is not so satisfied or where the said Commissioner is of the opinion that such permit should not, for any reason, be issued, the said Commissioner shall refer such application to the Council by submitting a report thereon to the City Services Committee and the City Services Committee shall report thereon to the Council and the Council after consideration of the recommendations of the said Commissioner and the City Services Committee may issue or may refuse to issue the permit.

(11) Each vendor issued a permit under this section may have not more than 3 agents or employees for the purpose of selling refreshments or foodstuffs.

(12) Except as provided for in this section, where a Push Cart Food Vending Zone has been marked and delineated in accordance with subsection (4), no person shall from a push cart sell, offer for sale or display for sale any refreshment or any kind of foodstuffs or otherwise occupy for purposes of push cart

food vending, any portion, other than such Push Cart Food Vending Zone, of the street or streets in which such Push Cart Food Vending Zone is located, notwithstanding any permit issued under this by-law.

(13) Each vendor shall pay in advance an annual fee in the amount of $100.00.

(14) A permit under this section shall be issued on a yearly basis (April 1 to March 31) and such permit may be renewed prior to April 1 of each subsequent year provided that the Commissioner of Public Works is satisfied that the permit holder is not in default of any of the provisions of this section or such existing permit or the agreement which the vendor has signed pursuant to this section, provided however, that where the said Commissioner is not so satisfied, the said Commissioner shall refer such application to the Council by submitting a report thereon to the City Services Committee and the City Services Committee shall report thereon to the Council and the Council after consideration of the recommendation of the said Commissioner and the City Services Committee, may renew or may refuse to renew such permit.".